IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 86 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO.

Versus

KADERBHAI ALLARAKHABHAI PARMAR

Appearance:

1. First Appeal No. 86 of 2002

MR RK MISHRA for Appellant

..... for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/01/2002

ORAL JUDGEMENT

By filing this Appeal under Section 173 of the Motor Vehicles Act, 1988, appellant-United India Insurance Co. Ltd. has brought under challenge the

order dated July 12, 2001 recorded below exhibit-34 in MACP No. 94 of 1994 by the Motor Accident Claims Tribunal (Aux.), Gondal by which appellant is directed to pay Rs.20,000/- by way of compensation alongwith running interest @ 9% per annum from the date of the application till realisation and proportionate cost jointly and severally with respondent Nos. 2 & 3.

2. The accident in question has taken place on January 4, 1994 when the original claimant was returning from village Pithadia with his Ambassador Car bearing No. GJ-3-T-9268 and when he was approaching Jetpur, at that time a Matador bearing No. GTS 8508 came from the Jetpur end and came between the junction of cross-road of Jetpur-Navagadh, and dashed with the Ambassador of the claimant, as a result thereof Ambassador got substantially damaged. It was the contention of the claimant that the driver of the Matador was driving his vehicle in rash and negligent manner and in excessive speed and therefore driver, owner and insurer of the said vehicles, jointly and severally were liable to pay the amount of compensation. The claimant, therefore, claimed total compensation of Rs. 25,000/- with interest and cost from the driver, owner and insurer of the Matador under Section 166 of the Motor Vehicles Act.

3. The appellant has taken defence by filing written objection at exhibit-7 wherein factum of accident, damage to the vehicle and compensation claimed therein were denied and, therefore, ultimately it was prayed to dismiss the petition.

4. The Motor Accident Claims Tribunal framed point for determination, recorded the evidence and upon appreciation and evaluation of the evidence came to the conclusion that the accident in question has taken place because of rash and negligent driving on the part of both the drivers, that is, Matador and Ambassador Car in the ratio 80:20. Thereafter, Tribunal determined the damage caused to the vehicle which according to the Tribunal was Rs.25,000/- and after deducting the 20% negligence of the driver of the Ambassador, that is the claimant has awarded compensation of Rs. 20,000/-, which has given rise to the present appeal at the instance of the original insurer.

5. I have considered the submissions advanced by Mr. R.K.Mishra, learned advocate for the appellant. I have perused the averments made in the memo of the appeal, grounds set out therein and also the impugned order.

6. So far as the factum of accident and the involvement of the vehicles are concerned there is no dispute. On having perusal of the impugned judgement, I am of the view that the Tribunal has very rightly considered the aspect of the negligence on the part of both the drivers and ultimately held that the driver of the Matador was negligent to 80 percentage whereas driver of the Ambassador that is the claimant was negligent to the 20 percentage. So far as the assessment of compensation is concerned, on having perusal of panchnama and scene of occurrence it seems that the car of the claimant was actually damaged to the extent of Rs.25,000/-. When the Tribunal has considered the damage to the vehicle at Rs.25,000/- and thereafter reducing the 20% of the negligence of the claimant, the Tribunal has awarded Rs.20,000/- by way of compensation which according to me is just reasonable and adequate which cannot be termed as too excessive and, therefore, no interference is called for in this appeal.

7. In the case of NAGAPPA MAHADEV DODDAMANI V. NEW INDIA ASSURANCE CO. LTD. (1998) 9 SCC PAGE 271, Supreme Court has considered the grounds for interference with the quantum in appeal and observed that such interference, held, permissible only on the ground of compensation being inadequate or too excessive.

8. Seen in the above context and the observations made by the Supreme Court at the cost of repetition be it stated that impugned order under appeal cannot be called too excessive. However, on the ground of smallness also this Court deem it not expedient to interfere with the impugned order and hence appeal deserves to be dismissed at the inception.

9. For the foregoing reasons, the appeal fails and accordingly it is dismissed at the threshold with no order as to cost.

(A.M.Kapadia, J)

Jayanti*